IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 2336 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. M.A. Utgikar for the appellants.

CORAM : A. M. KHANWILKAR, J.

DATE : FEBRUARY 16, 2006

P.C.

. The only question that is argued before this Court is that having regard to the circumstances in which the accident has occurred, it is incomprehensible that the said accident occurred in the course of employment. The argument is quite attractive but overlooks the fact that the benefit under the provisions of ESI Act has been

availed by the relatives of the deceased under the provisions of E.S.I.Act. That pre supposes that the accident occurred during the course of employment. In any case, the settled legal position as stated in the decision of **"A Trehan Vs. Associated Electrical Agencies and another, reported in 1996 ACJ 853** of the Supreme Court is that in case of employment injury, the bar u/s 53 of E.S.I. Act is absolute and no application under any other Act including Motor Vehicle Act, is maintainable. It is only to get over this legal position the above argument was canvassed; which as mentioned earlier will have to be rejected in view of the benefit availed under the provision of E.S.I.Act. There is no substance in this appeal. The same is dismissed.

[A.M. KHANWILKAR, J.]